

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Craig S. Jones, et al.,

Plaintiffs,

v.

Case No. 2:11-cv-380

Kerry A. Allen, et al.,

Judge Michael H. Watson
Magistrate Judge Kemp

Defendants.

ORDER

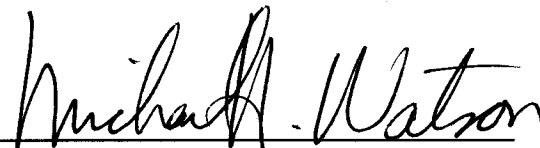
On July 17, 2012, United States Magistrate Judge Kemp, to whom this case was referred pursuant to 28 U.S.C. § 636(b), issued a Report and Recommendation, ECF No. 50, on Defendants' motion to dismiss, ECF No. 21. Judge Kemp recommended that the Court deny Defendants' motion. In addition, Judge Kemp recommended that Plaintiffs' motion to strike argument in reply, ECF No. 33, be denied as moot.

The Report and Recommendation specifically advises parties that the failure to object to the Report and Recommendation within fourteen days of the Report results in a "waiver of the right to *de novo* review . . . by the District Judge and waiver of the right to appeal the judgment of the District Court." Report and Recommendation 5-6, ECF No. 50. The time period for filing objections to the Report and Recommendation has expired. Noting that no objections have been filed and that the time for filing such objections expired, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge, ECF No. 50, **DENIES** Defendants' Motion to Dismiss, ECF No. 21, and **DENIES** as moot Plaintiffs' motion to strike, ECF No. 33.

Defendants now move to convert the motion to dismiss into a motion for judgment on the administrative record, ECF No. 51. Defendants argue that by attaching the entire administrative record to the motion to convert, Defendants have addressed Judge Kemp's concerns and the entire matter can proceed to disposition. Plaintiffs respond that such a conversion would prejudice them because their response to the motion to dismiss was not what they would have submitted in response to a motion for judgment on the administrative record. The Court agrees. While Defendants are free to make the same arguments that they made in the motion to dismiss, Plaintiffs should have the opportunity to address the issues in light of the entire administrative record. In addition, both parties need to address the issue of the standard of review that should apply to the Committee's determination of whether the amendment to the 2005 National City Plan was valid and effective. Accordingly, the Court denies Defendants' motion to convert, ECF No. 51. Defendants remain free to file a motion for judgment on the administrative record.

For the reasons stated above the Court **ADOPTS** the Report and Recommendation, ECF No. 50, **DENIES** Defendants' motion to dismiss, ECF No. 21, **DENIES** Plaintiffs' motion to strike, ECF No. 33, and **DENIES** Defendants' motion to convert, ECF No. 51.

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT